

**PRACTICING TRUSTS AND ESTATES LAW IN THE 21ST
CENTURY**

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Practicing Trusts and Estates Law in the 21st Century

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I. Introduction.

A. In General

Using contemporary technology is as essential to modern lawyering as a typewriter and carbon paper were to our parents' generation of practitioners. The requirements of technology won't disappear, no matter how hard some of us might wish for that to be so. A lawyer who is convinced that this phenomenon is a passing fad so that he or she can continue to practice law without paying any regard to it may as well retire because that lawyer won't earn any more money to contribute to the retirement plan. Contemporary technology affects a lawyer's provision of services, from the preparation of documents, to the conduct of research, through office management to client communication.

The challenge is to find efficient and cost effective technological tools that work for *you*. Having the right tools often means saving time and money – it often proves true that a stitch in time will save nine – doing some homework regarding the technological tools available to your practice will be well rewarded. The author has researched some marvelous software solutions that would have addressed every conceivable need, plus more. The drawbacks to these marvels are that invariably they are designed for law firms with 10 to 20 times as many lawyers as the author, with a comparable cost factor. While discovering the balance between the benefits and costs of these tools is the reader's personal project, knowing what is available and what others are doing can be a useful guide.

A practitioner should utilize a three-prong test when examining technology:

- **Efficacy** (does it do what I want it to do?);
- **Efficiency** (will it do it better than I do it now once I have learned how to use it?); and
- **Cost analysis** (how much time and money do I have to put into this tool to make it work and what's the next best alternative?)

[For some there is also the "fun factor" – sometimes one is willing to pay for the "bells and whistles" on the gizmo – but then one should realize that is what one is doing.]

Implementing a new product or procedure should include assessment of need, researching the new product or procedure, trying and evaluating it, purchasing or instituting it, and learning and obtaining training to use it for maximum benefit.

The purpose behind this research and investigation is to make effective use of technology. After all, the objective is more time that one can devote to the

rewarding aspects of the practice, continued high quality and timely delivery of legal services to clients, and more money in your bank account.

B. Topics Covered in this Outline

1. **Trusts and Estates Specific Software**
2. **Tax and Trusts and Estates Research: Paper, CD-ROM, Proprietary Legal Database, Internet**
3. **Internet Resources**
4. **Electronic Mail**
5. **Computer and Other Security Issues**
6. **Legal Practice Management Software**
7. **Hardware**

C. Locating useful information.

Typically, the most relied upon sources for decision-making are the following:

- Product demonstrations/trial use
- Product reviews articles: especially direct product comparisons and new products
- Colleagues, consultants, and friends
- Product advertising

A comprehensive resource is the American Bar Association – its sections, website, journal, books, etc. See especially its Legal Technology Resource Center and the sections of Law Practice Management and Real Property, Probate and Trust Law. Membership in these sections is worth the annual dues.

Readers may find useful two books written by Daniel B. Evans that may be helpful:

- *How to Build and Manage an Estates Practice*, American Bar Association, 1999, ISBN: 1570737185. \$54.95. P.O. Box 10892, Chicago, IL 60610-0892, Tel.: (312) 988-5522. See <http://www.abanet.org/>
- *Wills, Trusts, and Technology: An Estate Lawyer's Guide to Automation*, ABA Publishing, 1996, ISBN: 1570733562. \$84.95. P.O. Box 10892, Chicago, IL 60610-0892, Tel.: (312) 988-5522. See <http://www.abanet.org/>. His website contains an updated version of the Appendix A (a list of trusts and estates software by category) of this book. See <http://evans-legal.com/dan/wtt-new.html>

Note that while the list has been updated (5/25/2001) it appears over-inclusive. For example, the document drafting software list categorizes fourteen software products. Unfortunately, less than half, perhaps fewer, are useful candidates. Despite his best efforts, the pace of technology outstrips the human capability to keep up.

For a fuller, although incomplete, list of resources please see the end of the outline.

II. Trusts and Estates Software

A. Document Drafting – Forms and Software

Document assembly software is a loose term that can refer to one of two approaches in creating client-ready documents. The term can describe an interactive software program that automatically produces documents based upon the user's input. Alternatively, it can mean "engine" or "shell" software program that is the structural platform used to create an automated document program in house. This outline will use the term to refer to software that automates the document drafting process.

According to an ABA survey trusts and estates law is the practice area that utilizes document assembly systems more than any other. Real estate and family law followed. In the ABA's 1998 Small Law Firm Technology Survey, 46.8% of the respondents reported using automated document assembly systems for their trusts and estates practice. This popularity stands to reason: both planning and administration lend themselves to the power of a computer driven document assembly.

Practitioners currently have five choices in document drafting wills and trusts:

1. Drafting each new document "from scratch;"
2. Drafting each new document by "filling the blanks" from a prior document that resembles the document to be drafted;
3. Using commercially available templates and forms (*e.g.* CEB products), with or without some customization in word processing software (macros, etc.);
4. Using commercially available drafting assembly software (*e.g.* products by West Group or Matthew Bender, both of which uses CAPS as the platform) ;
5. Creating your own drafting system with a "shell," "engine," or "platform" document assembly program (HotDocs, CAPS, FastDraft, GhostFill 2001, WinDraft, etc., which are the platforms that are used to create the products in the #4 category). Consultants are usually hired to implement this option.

For practitioners who have not yet moved to a document assembly program, Option 2 is probably the most popular approach. Nevertheless, for those interested in joining the 21st Century, the two most viable options are Options #3

or 4. Especially for smaller firms with only a few attorneys, the Option 5 takes too much time, effort, and expense.

It should not be hard to see the benefits of automating: faster generation of documents, with fewer errors, and consistency across documents. The challenge is to find the software solution that works best for you.

Here is a sample of products available:

1. Wills, Trusts, Powers of Attorneys, and Other Estate Planning Documents

➤ Drafting California Revocable Living Trusts, ISBN: 0881248010; Drafting California Irrevocable Trusts; California Will Drafting, ISBN: 0881244775; California Durable Powers of Attorney, ISBN: 0881249564. CEB books with optional companion floppy disks. Continuing Education of the Bar-California, 300 Frank H. Ogawa Plaza, Suite 410, Oakland, CA 94612-2001, Tel.: (800) 232-3444.

The forms disk include complete instruments, with various alternative clauses as separate files that may be used by the cut-and-paste method: \$169, \$219, \$219, \$119 respectively, each with companion forms disk of \$39.95 each. Or you can obtain all of these books along with the material on the floppy disks on a CD-ROM, with a host of other CEB publications for an initial price of \$899.

The CEB forms have been the California standard for decades. Many practitioners will be familiar with the language of the forms. Using their templates will provide substantive security, although the technology is not state of the art.

➤ Modern Estate Planning (CD-ROM) by Matthew Bender, \$1,210, ISBN: 0820526487. Tel.: (800) 223-1940, www.bender.com.

The practice guide discusses and includes wills, trusts, estate, gift and fiduciary income tax returns, tax practice and procedure issues. Not CA specific. Available either on CD-ROM or paper. Can be purchased as part of a larger library. The utility of this program is severely hampered by its lack of sensitivity to California law.

➤ California Wills & Trusts Drafting System (CD-ROM) by Matthew Bender., ISBN: 0820529001, Tel.: (800) 223-1940, www.bender.com. Initial cost is \$1,017 (stand alone). Network version also available.

For drafting of wills and codicils, revocable trusts and amendments, irrevocable trusts, synopses of wills and trusts, durable powers of attorneys, letter to clients, estate planning questionnaire, marital property agreement. The drafter answers a series of questions and the system produces documents that can be exported into a

word processor for further fine-tuning. This program is specifically directed to California practitioners. The “default” language of program can be customized by the user. This allows the practitioner to modify the program to include particular language that the practitioner may prefer.

Matthew Bender also publishes *California Wills and Trusts – Forms* (ISBN: 082052008X), a 3 volume publication that consists of forms used by the drafting software, and *California Wills and Trusts – Text* (ISBN: 0820520071), a 3 volume publication that describes the issues involved in drafting wills and trusts. Initial cost is \$428. Practitioners can therefore read the language of the forms in hard copy before drafting any client documents, as well as an explanation of the applicable law. *(In the interest of proper disclosure, the author is the legal consultant for the Drafting System and an editor of the print product.)*

Drafting Wills and Trust Agreements on CAPS by Robert P. Wilkins and Capsoft (Clark, Boardman, Callaghan, West Group), 1992, www.westgroup.com, (800) 762-5272. Initial cost is \$695.

For drafting of wills, trusts, synopses of documents, property agreements, durable powers of attorney. Not California law specific. Comparison to Matthew Bender’s CAPS product – MB is more directed and comprehensive, perhaps more rigid, compared to West’s. MB is California law specific, which is a big plus.

➤ DL: Drafting Libraries. \$250/per library of documents.

Various “libraries” (e.g. Wills, Trusts, Separation Agreements) of documents available. Documents are produced based on multiple choice, yes/no, fill-in-the blank questions and can be further edited on word processor.)

➤ Trust Plus and TrusTerminator by Cowles Legal Systems, (800) 366-1730, www.cowleslegal.com. Initial costs are \$3,990 and \$2,990 respectively or \$4,990 for both (Cowles Complete).

Trust Plus – For drafting wills, trusts, synopses of documents, property agreements, and durable powers of attorney. State specific. Also includes documents related to trusts including SS-4 application, correspondence to trustees, insurance companies, IRS. It is intended to be a comprehensive estate planning practice system, thus includes various marketing materials.

TrusTerminator – It generates correspondence, transfer documents, inventory, and accounts. State specific. Can share data with Trust Plus.

➤ EP Expert, based on WinDraft, a shell/platform document assembly software, by Eidelman Associates, (800) 775-2786, www.lawtech.com. Initial cost for single user is \$995; Additional licenses (up to 5): \$4,995.

It appears from the website information that EP Expert is usually customized for each client through consulting services offered by Eidelman Associates.

2. Trust Funding, Administration, Termination

➤ Henson's Transfers by Richard W. Henson (Brentmark Software, (800) 879-6665, www.brentmark.com). Prepares trust schedule and trust transfer documents, including state-specific forms like PCOR. Includes a nationwide database of county recorders, life insurance companies, etc. Redone in Windows, to be released summer 2002. \$695.

➤ California Trust Administration. CEB, 300 Frank H. Ogawa Plaza, Suite 410, Oakland, CA 94612-2001, Tel.: (800) 232-3444. \$195, with \$39.95 companion floppy disk with forms for use during trust administration (checklists, letters, accounts, petitions).

Note: GAW System Excel spreadsheet with explanation by contributor David B. Gaw can be useful for those who want detailed guidance on subtrust funding and allocation.

➤ California Trust Practice, by John A. Hartog and George R. Dirkes. Matthew Bender, (800) 833-9844, ISBN: 0820527610, \$193. Price includes companion floppy disk containing forms for use during trust administration (checklists, letters, accounts, petitions). [*Please note prior disclosure*]

➤ TrusTerminator by Cowles Legal Systems. Probate Administration, see above description in II.A.1.

B. Estate Planning Software: Calculations and Presentations

1. Do You Even Need Estate Planning Software?

The utility of estate planning software often serves as a topic of vigorous debate among two categories of planners. One group emphasizes the need to provide thorough calculations and projections as a method of persuading clients of the efficacy of estate planning. Showing clients what wealth can grow to makes GSTT planning a much easier "sell." Similarly, other, more sophisticated techniques also become more acceptable to clients when they can "see" the projected dollar cost and savings. Likewise, charitable trust planning is rendered far more understandable when reduced to dollar illustrations. In providing such projections, the attorney is rendering a genuine service to the client by providing fuller information upon which the client can base an informed decision. The fact that the attorney may generate additional fees is an incidental, but welcome benefit.

Another group argues that for most clients little need for estate planning projections exists. Many an estate planning lawyer have practiced for decades

without providing clients with such projections. With the steady increase in the estate tax applicable exclusion amount, the simple drawings or flowchart that the lawyer has prepared for years while explaining the estate tax system to clients should continue to suffice.

Nevertheless, for those attorneys who have the client base that requires any tax planning, or for those attorneys who believe that computer generated projections are the wave of the future, there is software to assist you.

2. What Features Do You Need?

Depending on a practitioner's current or desired client base, he or she may not need every feature. Some companies produce a comprehensive version and a more basic version of their products; others may use a modular system to permit the addition of features onto a basic version.

In any event, these programs offer some or all of the following tools:

- Estate tax calculations
- Gift tax calculations
- Generation-skipping-transfer tax calculations
- Other calculations: special tax elections, life insurance trusts, liquidity need
- Retirement planning
- Charitable and split-gift planning
- Comparison Charts, graphics, explanations

Estate and Gift tax calculations are fundamental to all of these programs; therefore, the basic versions should always include these tools. GSTT calculations are similarly basic; if the program doesn't offer it in its cheapest version, select another vendor. Conversely, retirement planning and charitable planning are typically considered more sophisticated, and therefore are usually included within the "add-ons" at extra cost. See *Wills, Trusts, and Technology*, by Daniel B. Evans, for a more detailed discussion on these features.

As with all products, trying out the demo or trial versions is very useful.

3. Sample Product List

- BNA Estate Tax Planner by BNA Software, a division of Tax Management, Inc. Download demo available. \$1,195; Additional licenses (1-9): \$205.00 each. BNA also make estate tax, gift tax and fiduciary income tax returns. Like several other vendors, the data entered on the planning software is intended to migrate seamlessly into the administration and tax preparation software.
- Estate Plan Plus, by ProBATE Software Publishing Co. (800) 288-9169, www.probate-software.com. \$895, for one user. The scaled

down version is called Visual Plan Plus. The cost is \$395 for one user. Download demo available and 30-day money back guarantee. The program can be purchased as part of larger package, which includes a fiduciary accounting and tax return preparation module.

- EPLAN by U.S. Trust Company of New York, (212) 852-3564, www.ustrust.com. No price info online. EPLAN also migrates into a Form 706 preparation program, but no other modules are available.
- NumberCruncher, QuickView, IRS Calculator by Leimberg & LeClair, Inc., (610) 527-5216, www.leimberg.com Three separate programs: \$395, \$249, \$149 respectively for one user. No demo, but 30-day money back guarantee. NumberCruncher is an extremely powerful application. It is also very reasonably priced for the features offered. The Website totes an endorsement by Natalie Choate.
- TigerTables, Tiger Tables Software, 4529 Pershing Place, St. Louis, Missouri 63108, (314) 231-2800, (www.tigertables.com). Features include (1) an **estate tax calculator** which will do interrelated estate tax computations where a portion of the residue is otherwise deductible (marital or charitable deduction) but bears tax; and (2) an **amortization program** which will calculate for any missing variable (principal amount, payment amount, length of term or interest rate) and do a nice printout of a summary or full amortization schedule. The new version also has several new variations for a self-canceling installment note: it will calculate principal and interest premiums for self-amortizing, interest-only and level-principal loans and print a payment schedule. Among the features are a nearest age calculator utility and private annuity calculations.
- ViewPlan (combining former Vista and Progeny); BeneView; Factory by ViewPlan Division of CCH Inc., (800) 826-2127, www.viewplan.com. Three separate programs: \$925, \$865, \$455 respectively for one user. Another very powerful program, with extremely attractive graphics for client presentations.

C. **Fiduciary Accounting and Tax Returns (gift, estate, fiduciary income tax)**

The value of a fiduciary accounting system is that it can assist immensely in the organization of an administration, whether it be a probate or trust. Often the task of entering the data can be given to paraprofessional staff after a moderate amount of training. One program, the ACTEC Quicken overlay, can be used by clients directly. A fiduciary accounting system should be seriously investigated by any practitioner who has an administration practice.

The companies below provide both fiduciary accounting and tax return products. The great advantage to this "integrated" approach is that the data need be entered only once to be able to be used for multiple purposes.

- ProBATE Software Publishing, (800) 288-9169, www.probate-software.com, (ProBATE Plus, 706 Plus, 709 Plus, 1041 Plus)
- Fast-Tax Trust Services Zane Product Group (Zane/Fiduciary Accounting System), (800) 331-2533, www.zanenet.com
- Lackner Computer Group, Inc., (412) 279-2121, www.lacknergroupp.com, ("6 in 1" includes state estate tax return, but not a gift tax return, Form 709, preparation module)
- West Group ("FATE") fiduciary accounting software, (800) 762-5272, www.westgroup.com. Melds seamlessly into the West proprietary tax return programs; unfortunately for California users, the vendor currently has modules only for Florida, New York, and Virginia; for reasons the company is unable to explain adequately, introduction of the California module remains "imminent."

The companies below provide only fiduciary accounting products.

- American College of Trust and Estate Counsel (ACTEC), 3415 South Sepulveda Boulevard, Suite 330, Los Angeles, CA., (310) 398-1888, www.actec.org. Note that the ACTEC product is not truly stand-alone. Rather, it is a fiduciary accounting template that overlays onto a standard Quicken program. In consequence, the program is less powerful than others, but very easy to use, and inexpensive.
- TEdec Systems, Inc. (TEdec Fiduciary Accounting System), (800) 345-2154, www.tedec.com.

The companies below provide tax return products:

- BNA Software (BNA 706 Preparer, etc), (800) 372-1033, <http://zeus.bna.com/soft/ETS.html>.
- DataTech Software Inc. (Quick and Easy Estate Practice), (800) 556-7526, www.quickandeasy.com.
- LaCerte Software (host of tax software for accountants, including 706, 709, 1041), (800) 876-6672, www.scoft.com.
- US Trust, 1-800-USTRUST, www.ustrust.com, provides a Form 706 and 709 preparation program that integrates seamlessly with its estate planning software or as a stand-alone. The program provides powerful calculations, but remains DOS-based, which is a drawback in a computer world moving to Windows XP.
- West Group provides a Federal gift and estate tax return preparation program that integrates with FATE. The tax return preparation program is available in both Windows and DOS. Users report technical difficulties with the Windows version, but not the DOS version. As noted above, the FATE integration feature is of dubious utility in California.

D. Asset Valuation

Preparers of estate and gift tax returns require proper valuation of financial assets. Practitioners no longer need rely locating the financial pages of newspapers from the date of transfer from the recycle bin or other obscure receptacle. This information is readily available from several securities valuation services. Most of these vendors sell proprietary software that enable the user to access the current information on-line. For those who remain suspicious of the Internet, CDs with the database are periodically forwarded.

- Appraise by Evaluations Services, Inc., (201) 754-8500, www.appraisenj.com
- EPScom by Clark Boardman Callaghan, West Group., (800) 323-1336, www.cbcllegal.com
- EstateVal by Estate Valuations & Pricing Systems, Inc., (800) 237-3440, www.evpsys.com
- Portfolio Evaluations by Estates, Evaluations & Estimates, (800) 597-0239, www.estatevalue.com
- Wallace Historical Securities Pricing by Financial Data Service, Inc., (714) 891-9243, www.financialdata.com

Business valuation software – use for information, not to replace actual valuation by appraiser:

- Advanced Business Valuation by Essential Software, (414) 797-5500, www.ess-soft.com
- Business Quick-Plan by Kettley Publishing, (800) 777-3162, www.kettley.com

III. Tax and Trusts and Estates Research

A. In General

Current technology offers the same material more readily, and it can also offer research material not easily available previously. For example, legal research on CD-ROM enables the user to move faster between sections of a treatise or code. A CD-ROM also allows the researcher to do word searches, which is more comprehensive than a simple scan of the index. Now, the spreading use and development of the internet is rendering CD-ROM research obsolete. This development also means the creation of many resources not previously available: virtual communities, immediately available information, free information, and easy access to sources previously inaccessible.

Practitioner-users should always remember, however, that the most “technologically” advanced way may not always be the fastest method or the most cost effective medium. For example, paper products are “slower,” but they are

more leisurely, and easier to absorb for those to whom computers are not an ordinary part of life. (In digression, researchers have ascertained that a monitor screen smaller than 23 inches will always be harder for information absorbing than paper. Therefore, if one wishes to replace paper entirely with electronics, buy a monitor no smaller than 23 inches, preferably larger) Paper also has the advantage of only being eaten by the dog, while electronic media can “crash” and be irretrievably lost without a proper backup.

Nevertheless, readers should not assume that the legal arena will become “paperless” immediately. Conversely, the trend toward paper reduction is irreversible. Given the astounding pace of technology over the past decade, any predictions about how soon a trend will become the standard is silly speculation. For at least the next two years, though, the author believes that practitioners will continue to rely upon both paper and paperless sources.

B. Research Tools

When undertaking legal research in the current environment, the first choice is selecting the medium. In part this decision will turn on the question to be answered. If the problem requires resort to a treatise, paper will be preferable. If the research needs current information, because it is tax or case law sensitive, then the internet will be preferred. Internet research is most useful generally for federal laws or regulations, factual research, recent or hot topics, and material not available in traditional media. Keep in mind the strengths and weaknesses of each resource.

In the gamut of resources for research:

- Paper Library: Codes, Cases, Practice Guides, Treatises, Journals, etc. – it still may be the case that the written word may be all you need and in fact the preferred method for certain publications you use the most.
- CD-ROMS: Many paper products are also available on CD-ROMs and online. The “one-time” cost and the computerized search capability may be useful for items too costly or inconvenient to purchase individually in the paper version. E.g. BNA Tax Management Portfolios, Shepard’s Citations, CEB Estate Planning Practice Library (this product comes with online access).
- Proprietary Legal Databases: LexisNexis, Westlaw, LoisLaw, VersusLaw, JuriSearch. Codes, Cases, Practice Guides, Treatises, Journals, Law Reviews, Secondary Sources, Citation Checking, etc.
- Internet Resources: Many items available through traditional media are also available through the internet – codes, cases, articles – and a plethora of resources previously unavailable are now available: websites, directories, search engines, discussion groups.
- Online Communities: A notable consequence of the internet is the development of discussion groups and list-servs. Through the medium of e-mail, practitioners have access to interstate study groups. The sophistication of these

